No. 9204

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

7

County of Fresno and G. P. Cummings, Assessor of the County of Fresno, State of California,

Appellant,

vs.

Commodity Credit Corporation,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

APPELLANT'S OPENING BRIEF.

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Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

APPELLANT'S OPENING BRIEF.

A. STATEMENT AS TO JURISDICTION.

This action for declaratory relief was commenced by the appellee in the District Court of the United States in and for the Southern District of California, Northern Division.

Section 274d of the Federal Judicial Code provides, in part, as follows:

> "(1) In cases of actual controversy except with respect to Federal taxes the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal rela-

tions of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith."

In paragraph X of the amended complaint we find the following allegations:

"That this suit is brought under and pursuant to the Federal Declaratory Judgment Act (Judicial Code, section 274d, 28 U. S. C. A., section 400); that an actual controversy exists between plaintiff and defendants herein in that plaintiff contends that it has acquired rights, interests and liens in and to the cotton on which it has made advances and has acquired and holds warehouse receipts as aforesaid, and that said rights, interests and liens so acquired and held by plaintiff constitute property that is exempt from taxation by the State of California and all political subdivisions of said state, and that no valid or legal assessment can be made of said cotton, and no valid or legal actions or proceedings can be had or taken respecting the seizure and sale thereof for nonpayment of taxes,

unless said assessments and said actions and proceedings are expressly made subject to all said rights, interests and liens of plaintiff in and to said cotton, and unless any tax sales of said cotton are by express terms made subject to all said rights, interest and liens of plaintiff; on the other hand, defendants contend that said cotton is subject to assessment and taxation by the State of California and its political subdivisions, and is subject to seizure and sale in the event of nonpayment of taxes, without said assessments, seizures or sales being made subject to said rights, interests and liens of plaintiff."

Section 24(1) of the Federal Judicial Code provides, in part, as follows:

> "The District Courts shall have original jurisdiction as follows:
>
> First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds * * * the sum or value of $3,000., and (a) arises under the constitution or laws of the United States, * * *"

In paragraph VIII of the amended complaint we find the following allegations:

> "That this suit arises under the Constitution and laws of the United States and involves rights, privileges and immunities owned and claimed by the plaintiff under the Constitution and laws of the United States and denied and disputed by the defendants."

In paragraph IX of the amended complaint we find the following allegations:

"That the matter in controversy herein, exclusive of interest and costs, amounts to more than $3,000., and in that regard plaintiff alleges that the amount of said tax and the value of the said property and the value of the interest of the plaintiff therein each exceeds the sum of $3,000."

This Court has jurisdiction to entertain this appeal by virtue of the provisions of Section 128 of the Federal Judicial Code.

Said Section 128 provides, in part, as follows:

"The Circuit Court of Appeals shall have appellate jurisdiction to review by appeal final decisions.

First—In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title. * * *"

B. STATEMENT OF FACTS.

On the first Monday in March, 1938, the Assessor of the County of Fresno, State of California, assessed personal property taxes to unknown owners, on some 20,990 bales of cotton which were physically located, at that time and at all times thereafter, in warehouses situated in the County of Fresno, State of California.

The Assessor of said County assessed the 20,990 bales of cotton at $419,800 and levied a tax against the cotton in the amount of $17,505.66.

That the tax, so assessed, was not paid within the time allowed by law and on the 21st day of June, 1938 the Assessor seized the cotton for the purpose of selling the same to effect collection of the tax. On that date he published a notice as required by law, setting the sale, at public auction, for the 29th day of June, 1938. (Tr. pp. 14-16.)

Thereafter that sale was postponed and the appellee, in the meantime filed a complaint in the Federal District Court at Fresno, California, to enjoin the sale on the theory that the assessment of the tax and sale to effect collection would constitute an unlawful burden on itself and the United States, in that all of said cotton had been pledged to it as security for a loan made to the producers and owners of the cotton.

A temporary restraining order was issued by the Federal District Court restraining the appellants from selling the cotton involved herein. The appellants filed a motion to dismiss the complaint on the ground, *inter alia,* that it did not state facts sufficient to constitute a cause of action against the appellants. Thereafter the appellee amended its complaint (Tr. pp. 2-3) and appellants filed a motion to dismiss the same. (Tr. p. 21.)

On October 25, 1938, the matter was argued before Honorable George Cosgrave in the Federal District Court at Fresno, California, and on January 11, 1939, the Court decided the matter in favor of appellee herein. (Tr. p. 22.) Judgment was entered on March 3, 1939. (Tr. pp. 23-25.)

On May 4, 1939, the appellants herein filed their notice of appeal from that judgment (Tr. pp. 25-26) and on June 19, 1939, the appellants filed their statement of points to be relied upon on appeal and designation of the record to be printed. (Tr. pp. 32-36.)

This case has been selected as a test case to determine whether a state or its political subdivision may tax commodities situated within their jurisdictional boundaries even though such commodities have been pledged *to the appellee* as security for a loan made to the producers of the commodities by the appellee.

This case was consolidated, in the Federal District Court, with a similar case arising in the County of Kern, State of California. The decision of the Court herein on appeal will be binding on the County of Kern and the appellee.

Besides loans made on cotton situated in various counties in the State of California, the appellee has also made numerous loans on prunes, raisins, brandy and figs, situated in the various counties in the State of California.

The local taxing authorities have assessed all these commodities located within their respective counties, and are withholding the sale of the same pending the present appeal pursuant to stipulation and agreement with the appellee herein.

In order that the Court may have a better picture of the creation and functions of the Commodity Credit Corporation, appellee herein, we will now present for the Court's consideration a brief history of that Corporation.

History of the Commodity Credit Corporation.

Section 2 of the National Industrial Recovery Act of June 16, 1933 (48 Stats. 195 (hereinafter referred to as N. R. A.)) provides, in part, as follows:

> "(a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies * * * as he may find * * * necessary * * *.
>
> (b) The President may delegate any of his functions and powers under this title to such officers, agents and employees as he may designate or appoint, * * *
>
> (c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended."

The policy referred to by Section 2 of the Act, supra, is set forth by Section 1 of the Act as follows:

> "A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among

> trades groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industry, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing the purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry, and to conserve natural resources."

Pursuant to Section 2 of the N. R. A. and to effectuate the policy referred to in Section 1 of that Act, the President, on October 16, 1933, issued executive order No. 6340. (Exhibit A in the Appendix.) Said order purported to authorize the incorporation of the Commodity Credit Corporation (hereinafter referred to as the Corporation).

Attention is particularly called to the following language found in said executive order, to-wit:

> "* * * Now, therefore, under and by virtue of the authority vested in me by the National industrial Recovery Act of June 16, 1933, it is hereby ordered that an agency, to-wit: A corporation, under the laws of Delaware, be created, said corporation to be named the Commodity Credit Corporation * * *"

On January 31, 1935, Congress purported to extend the life of the Corporation to April 1, 1937. (See Exhibit B in Appendix.)

On January 26, 1937, Congress purported to continue the existence of the Corporation until June 30, 1939. (See Exhibit C in Appendix.)

On March 13, 1939, Congress purported to extend the life of the Corporation to June 30, 1941. (See Exhibit D in Appendix.)

The Corporation has an authorized and paid in capital of $100,000,000. Under the provisions of the Act of March 8, 1938 (Public No. 442, 75th Congress), the Secretary of the Treasury is required to make an appraisal of all of the assets and liabilities of the Corporation, as of March 31st of each year for the purpose of determining its net worth, and in the event such appraisal establishes a net worth of less than $100,000,000, the Secretary of the Treasury is required, on behalf of the United States, subject to appropriation of funds therefor which is authorized by the Act, to restore the amount of such capital impairment. In the event the net worth of the Corporation, as of March 31, of any year, is in excess of $100,000,000, such excess is required to be deposited in the Treasury by the Corporation to be credited to miscellaneous receipts.

Under the Act of March 8, 1939, supra, the Corporation is authorized with the approval of the Secretary of the Treasury, to issue and have outstanding at any one time, notes, bonds, debentures and other similar obligations in the aggregate amount of not exceeding $900,000,000, such obligations when issued, pursuant to this Act, are fully and uncondi-

tionally guaranteed both as to principal and interest, by the United States.

The Corporation is essentially a lending institution making loans to producers to finance agricultural commodities. The Corporation has made loans on cotton, corn, gum, turpentine, and gum rosin, wool and mohair, wheat, peanuts, tobacco, raisins, dates, figs, prunes, butter, hops and pecans.

The loans of the Corporation are functioned through certain designated loan agencies of the Reconstruction Finance Corporation, the managers of which act for the Corporation in approving notes secured by agricultural commodities which are submitted for direct loan from the Corporation, or which are tendered by lending agencies for purchase by the Corporation.

Loans on corn, cotton, wheat, raisins, wool and mohair are made under an arrangement whereby banks and other local lending agencies may make the loans to producers in the first instance on forms furnished by the Corporation. Such of them as meet the requirements of the Corporation are acceptable to it for purchase at par with accrued interest, if tendered on or before a fixed date. Generally, the agreement to purchase such notes is at par with accrued interest. Thus, the Corporation receives 1½% in consideration of its agreement to purchase.

If local credit facilities are unavailable for any reason the Corporation makes direct loans in which case a note and loan agreement is executed by the

producer with the Corporation as the payee, and mailed with the other prescribed documents for approval and acceptance to the loan agency of the Reconstruction Finance Corporation serving the district where the producer resides.

The note and loan agreement (Exhibit E in Appendix) employed by the Corporation with respect to all loans which are made to individual producers provides, inter alia, "that the producer shall not be personally liable as long as he curtails production in accordance with the plan set forth by the Secretary of Agriculture".

Under Public Act No. 442 of the 75th Congress, approved March 22, 1938, the Secretary of Agriculture, the Governor of the Farm Credit Administration, and the Reconstruction Finance Corporation, were directed to transfer to the United States, all rights, title and interest in and to the capital stock of the Corporation which each of them held at that time.

Section 302 of the Agricultural Adjustment Act of 1938 (52 Stats. 31, 43) authorizes the Commodity Credit Corporation to make loans on agricultural commodities. *We particularly call the Court's attention to subsections C and F of said Section 302,* for the purpose of establishing that Congress primarily was attempting to control local production of cotton.

Under Section 401(a) (Public Resolution No. 20, 76th Congress, June 7, 1939) all of the activities of

the Corporation were transferred to the Department of Agriculture.

We thus see that the Corporation created in 1933 pursuant to executive order of the President of the United States (as purported to be authorized by Section 2 of the N. R. A.) with an initial capital of $3,000,000 has functioned and grown during the six years following to a large lending institution having a prescribed capital of $100,000,000 and having outstanding notes, bonds, debentures etc. in the amount of $900,000,000. It has made loans to producers on virtually all types of agricultural commodities. It is apparent that the sole purpose of these loans was to *control* the local production of agricultural commodities grown within the states of the United States in an attempt to raise prices of agricultural commodities and thereby to increase the purchasing power of farmers throughout the United States.

C. STATEMENT OF THE CASE.

This case presents for this Court's determination the question whether the County of Fresno, State of California, has the right to levy a personal property tax on cotton situated within its jurisdictional boundaries on the first Monday in March (March 7), 1938 and thereafter to sell the same to effect collection of the tax, when that cotton has been, prior to or after the first Monday in March, 1938, pledged to the Commodity Credit Corporation as security for

a loan advanced by the Corporation to the producer of said cotton.

The question arose when the Corporation, appellee herein, commenced this action to have its rights in the cotton adjudicated and sought an injunction against the County of Fresno enjoining said county and its officers from proceeding with a tax sale of said cotton. Thereafter the stipulation found on pages 2 and 3 of the transcript on appeal was entered into by the above mentioned parties.

The appellee contends that the appellants cannot assess the cotton, in question, without taking into consideration the alleged "property" of the appellee in and to the cotton which they allegedly acquired by virtue of the aforesaid pledge transaction. Appellee further contends that the appellants cannot sell the cotton to effect collection of a tax assessed which did not make allowance for the alleged "property right" of the pledgee—appellee.

Appellee bases its contentions on the provisions of Section 1 of Article XIII of the Constitution of the State of California and upon the implied constitutional immunity doctrine, to-wit: The state cannot tax the property of a Federal instrumentality.

Appellants, on the other hand, contend that they have the right to tax the cotton, in question, at the full assessable value thereof, without any deductions or allowances being made by reason of the fact that the cotton has been pledged to the appellee to secure a loan made by the appellee to the owner of the cot-

ton. Appellant further contends that they may sell the cotton to effect collection of the tax so imposed without providing that a buyer at such tax sale take the cotton subject to the alleged interest of the appellee.

Appellants base their contention upon the following:

(1) The appellee was not lawfully created and therefore has no legal existence and therefore is not an instrumentality of the Federal government;

(2) Even though the appellee was lawfully created, nevertheless, a tax imposed upon the cotton involved herein, would not constitute a burden within the implied Constitutional immunity doctrine;

(3) The cotton does not "belong to" the appellee or the United States and therefore no interest of either the appellee or the United States was taxed. (Tr. pp. 32-33.)

D. FOREWORD.

Prior to presenting our argument herein we deem it advisable to present a review of the creation and function of corporations which have been federally owned or chartered. We feel that this is advisable because:

(1) We desire to show that prior to 1933 such corporations were created by an Act of Congress which defined their duties and functions;

(2) We desire to show that those corporations, prior to 1933, were engaged primarily in traditionally governmental functions while, thereafter, such corporations have been engaged in functions that have hitherto been unknown to the Federal government.

(3) We desire to show the Court the attendant consequences, if appellee's contentions are sustained, upon the taxing power reserved to the respective states by the Federal Constitution when it is considered that more and more of these corporations are being created to carry on functions that were hitherto unknown to the Federal Government.

We now present that review:

Until 1932 the United States had little experience with government-chartered corporations and less with corporations owned or controlled by the Federal Government. Prior to the World War, the Panama (32 Stats. 481) and Alaska (38 Stats. 305) represented the only Federal excursions into the field of government-owned corporations. Greater experience has been had with corporations federally chartered —but not exclusively owned or controlled by the Federal Government; even here, however, that experience has been limited to the creation of banking and credit corporations designed for either general financial uses or for the supplying of more specialized financial facilities for agriculture. (First U. S. Bank, 1 Stats. 191, Second U. S. Bank, 3 Stats. 266,

National Bank, 13 Stats. 99, Federal Reserve Bank, 38 Stats. 251, Federal Land Bank, 39 Stats. 362, 363, National Farm Loan Assoc., 39 Stats. 365, Joint Stock Land Bank, 39 Stats. 374.) In 1923 the Federal Farm Loan Act was amended to authorize the Federal Intermediate Credit Bank (42 Stats. 1454) and the National Agricultural Credit Associations. (42 Stats. 1461.)

The war brought a change in the character of governmental corporations, and the Federal Government now became not only the incorporator but also the exclusive owner of a number of agencies which wartime development made necessary; the first of these was the Emergency Fleet Corporation, formed by the United States Shipping Board in pursuance of the authority granted to it in the original Shipping Act. (39 Stat. 729.) All of its stock was subscribed and paid for by the United States Shipping Board. Five additional wartime corporations were formed which have now gone out of existence, to-wit: the United States Grain Corporation (40 Stats. 276) War Finance Corporation (40 Stats. 506), the United States Housing Corporation (40 Stats. 594), U. S. Sugar Equalization Board (40 Stats. 276), and the United States Spruce Corporation. (40 Stats. 888.) (For a good review of these wartime corporations see *Skinner & Eddy Corporation v. McCarl,* 275 U. S. 1.) All of these instrumentalities were corporations entirely owned by the Federal Government.

After the war, only four government corporations were created until the year 1933. These were the

Federal Intermediate Credit Bank (42 Stats. 145), Inland Waterways Corporation (43 Stats. 360), Reconstruction Finance Corporation (47 Stats. 5), The Federal Home Loan Bank. (47 Stats. 725.) Since March, 1933, some twenty government-owned or government-chartered corporations have been created. (See 48 Harvard Law Review 775; 14 North Carolina Law Review 234, 337; 21 Va. Law Review 465, 501; 4 Geo. Washington Law Review 161; 44 Yale Law Journal 326; 49 Harvard Law Review 1323.)

An entire group of corporations has sprung from the present agricultural program. The Farm Credit Act of 1933 authorized the organization of a Central Bank for cooperatives (48 Stats. 261), 12 Banks for Co-Operatives (48 Stats. 257), 12 Production Credit Corporations (48 Stats. 257), and any necessary number of Production Credit Associations (48 Stats. 259). These corporations are designed for the purpose of credit facilities for the production of harvesting of crops, feeding of livestock, etc. The Federal Farm Mortgage Corporation (40 Stats. 347) was formed to aid the Federal Land Banks in their farm debt refinancing program. We have already referred to the creation of the Commodity Credit Corporation, involved herein, which was created in 1933 pursuant to executive order 6340 (which order was purported to be authorized by Section 2 of the N. R. A.). The Federal Surplus Relief Corporation (Public Law No. 93, 73d Congress, Second Session, February 15, 1934, Executive Order No. 7150, August 19, 1935) was formed to bridge the gap between the destitute unem-

ployed and surpluses of farm commodities. Its function is to purchase surplus food supplies and to distribute them to those on relief.

A second group of government corporations center around the housebuilding and financing program. The most important of these is the Home Owners Loan Corporation authorized under the Home Owners Loan Act of 1933 (12 U. S. Code Ann. Section 1463). This corporation was formed for long term loans at low interest rates to those who could not otherwise retain their homes through meeting regular payments or by refinancing. The corporation is authorized to issue $200,000,000 in capital stock to the Treasury, and to issue bonds, the interest on which is guaranteed by the government, to enable it to make some $4,500,000,000 in loans. The Home Owners Loan Act also provides for the creation of a Federal Savings and Loan System (48 Stats. 645) to cooperate with local citizens in setting up loan associations in communities not now adequately served. The Federal Savings and Loan Insurance Corporation (48 Stats. 1256) has also been established under the authority of the National Housing Act. Its purpose is to insure the safety of accounts of investors and depositors in thrift and home financing institutions.

ARGUMENT.

I. CONGRESS DID NOT, WITHIN THE PURVIEW OF THE CONSTITUTION OF THE UNITED STATES, HAVE THE POWER TO CREATE THE COMMODITY CREDIT CORPORATION.

A. THE PURPOSES, FOR WHICH THE CORPORATION WAS CREATED, ARE NOT WITHIN THE ENUMERATED POWERS GRANTED TO CONGRESS BY THE CONSTITUTION OF THE UNITED STATES.

The recent inauguration of a host of government-owned and government-chartered corporations, carrying on functions which have never before been assumed by the national government has made the problem of inter-governmental taxation more acute from the standpoint of the respective states. In approaching this problem one of the first questions that arises in our minds is, "whether the Commodity Credit Corporation (the agency involved herein) was created pursuant to the powers delegated to the Congress of the United States". It is our understanding that the only limitation upon the power *of Congress* to create instrumentalities is that they promote in some degree the fulfillment of the purpose *"of Congress"* in exercising its powers. See

McCulloch v. Maryland, 17 U. S. 316;
Osborn v. Bk. of the United States, 22 U. S. 738;
First National Bank v. Fellows, 244 U. S. 416;
Smith v. Kansas City Title & Trust Co., 255 U. S. 180;
Graves v. O'Keefe, 59 S. Ct. 595, 597;
Fed. Land Bk. v. Crosland, 261 U. S. 374;
Rogers v. Graves, 299 U. S. 401.

In the *McCulloch* case, supra, at pages 409, 410, it is said:

> "The creation of a corporation, in a sense, appertains to sovereignty. This is admitted but to what portion of sovereignty does it appertain? Does it belong to one more than to another? In America the powers of sovereignty are divided between the government of the union and those of the states. They are each sovereign with respect to the objects committed to it and neither sovereign with respect to the objects committed to the other. We cannot comprehend that train of reasoning, which would maintain, that the extent of power granted by the people is to be ascertained, not by the nature and terms of the grant, but by its date. Some state constitutions were formed before, some since that of the United States. We cannot believe, that their relation to each other is in any degree dependent upon this circumstance. Their respective powers, must we think, be precisely the same, as if they had been formed at the same time. Had they been formed at the same time, and had the people conferred on the general government the powers contained in the Constitution and on the states the whole residuum of power, would it have been asserted, that the Government of the Union was not sovereign, with respect to those objects which were entrusted to it, in relation to which its laws were declared to be supreme? If this could not have been asserted, we cannot well comprehend the process of reasoning which maintains, that a power appertaining to sovereignty cannot be connected with that vast portion of it which is granted to the general government, so far as it is calculated to subserve the legitimate objects of that govern-

ment. The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. No contributions are made to charity, for the sake of an incorporation, but a corporation is created to administer the charity; no seminary of learning is instituted in order to be incorporated, but the corporate character is conferred to subserve the purposes of education. No city was ever built, with the sole object of being incorporated, but is incorporated as affording the best means of being well governed. The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else. No sufficient reason is, therefore, perceived, why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them. * * *"

Since the federal government is one of limited power *Congress* has no general authority to create corporations save as means of carrying into execution some governmental power delegated to the federal government by the Constitution. If this be true, as it must, it becomes clear that the federal government could not charter or incorporate a corporation, having for its purpose the earning of private profits, entirely apart from the performance of governmental functions. See

Smith v. Kansas City Title and Trust Co., 255 U. S. 180;
Ashwander v. T. V. A., 297 U. S. 288.

Thus all of the banks which the federal government has, prior to 1933, created, the railroads it has chartered, the various boards and corporations it has, previous to 1933, brought into existence, are clearly means selected by Congress for carrying into execution delegated governmental functions.

All the governmental corporations recently created, to survive the ultimate test of constitutionality, must demonstrate their utility in giving effect to some governmental power which is conferred upon the federal government by the Constitution.

In *Ashwander v. T. V. A.,* 8 Fed. Supp. 893, 895, it is said:

> "If its program is more extensive, (than reclamation and the manufacture of munitions) and amounts to an engaging in and carrying on, independent of the question of surplus power and relation to a granted power, the general business of producing and selling electric power within the limits of Alabama, it is ultra vires of the power conferred or that could have been conferred by Congress on the T. V. A. by its act of incorporation * * *"

(1) The act, under which the Corporation was created, has been declared unconstitutional.

The executive order (Exhibit A) establishing the Corporation expressly referred to Section 2 of the National Recovery Act as the authority creating the

Corporation. That order further stated that the Corporation was created to effectuate the policy declared in Section 1 of the National Recovery Act, supra.

In *Schechter v. U. S.,* 295 U. S. 495, and *Panama Refining Co. v. Ryan,* 293 U. S. 388, the U. S. Supreme Court declared the National Recovery Act was unconstitutional in that it unlawfully delegated to the President of the United States powers not delegated to the federal government. Inasmuch as the Commodity Credit Corporation was alleged to have been created pursuant to Section 2 of the National Recovery Act and further inasmuch as it was set up to effectuate the policy of that Act we submit that the Corporation must fall with the Act that purported to authorize its creation.

The Corporation having been created to effectuate the policy declared by Congress in the National Recovery Act it necessarily follows that the Corporation was created for a purpose not within the delegated powers of the federal government. It further follows that inasmuch as the Act creating it was unconstitutional the Corporation itself was unconstitutionally created.

(2) The Corporation was created as a means of carrying out a power which is not within the delegated powers of the federal government.

The Tenth Amendment to the United States Constitution provides as follows:

> "Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Waiving for the moment the question of unlawful delegation, it is our contention herein that Congress sought to delegate to the Commodity Credit Corporation the right to regulate, for the federal government, the local production of agricultural commodities.

The creation of the Corporation was part of a general scheme to achieve federal regulation of local agricultural production.

In *United States v. Butler,* 297 U. S. 1, the Court held that that scheme was an invasion of a power reserved by the Tenth Amendment to the Constitution to the States and to the people. The Court clearly held that the *control of local production of agricultural products was the objective* of the Agricultural Adjustment Act of 1933. We submit that the Commodity Credit Corporation is and was merely one of the cogs in the machine which Congress purported to establish.

The Corporation does not merely offer advice, instructions, or financial aid, but, in extending that financial aid it is attempting to control local agricultural production and to fix local farm prices.

The National Industrial Recovery Act of 1933 and the Agricultural Adjustment Act of 1933 were part of a vision to achieve nation-wide economic recovery—the first by the control of industry and the latter by the control of agriculture. The ends to be accomplished through regulation by a central authority, in one case, the President of the United States, and the other, the Secretary of Agriculture.

The declared policy of Congress in the National Recovery Act and the Agricultural Adjustment Act of

1933 clearly discloses, as found by the U. S. Supreme Court, that its purpose was to control the local production of agricultural products. We submit that paragraphs 5 and 8 of the note and loan agreement (Exhibit F) used by the Commodity Credit Corporation unquestionably show that was the unlawful purpose for which the Corporation was created.

The U. S. Supreme Court has held, many times, that local activities, such as the production of commodities by farmers, are not subject to Congressional control.

See

Chassaniol v. Greenwood, 291 U. S. 584;
U. S. v. Butler, 297 U. S. 1;
Utah Power & Light Co. v. Pfost, 286 U. S. 165;
Heisler v. Thomas Colliery Co., 260 U. S. 245;
Oliver Iron Mining Co. v. Lord, 262 U. S. 172;
Crescent Cotton Oil Co. v. Miss., 257 U. S. 129;
Kidd v. Pearson, 128 U. S. 1.

The *Schechter* and *Butler* cases, supra, clearly establish that Congress was not acting pursuant to its power to regulate commerce when it enacted the N. R. A. and the A. A. A. Further the *Butler* case clearly establishes that even if it purported to act under its power to regulate commerce Congress could not accomplish a purpose which would invade a right reserved to the various states.

We submit that the Commodity Credit Corporation, not having been created as a means to effectuate or to carry out a power delegated to Congress, was created without lawful authority; that, therefore, any tax imposed upon a producer of cotton which has been

pledged to the Commodity Credit Corporation as security for a loan would not violate the implied constitutional immunity doctrine which grants exemption to certain types of federal instrumentalities from state taxation.

B. CONGRESS UNLAWFULLY DELEGATED TO THE PRESIDENT THE PURPORTED RIGHT TO CREATE THE COMMODITY CREDIT CORPORATION.

Section 2 of the N. R. A. purported to authorize the President to redelegate the almost illimitable powers conferred upon him by the Act to various commissions, bureaus, officers and other agencies.

We submit that the result of this redelegation was that those bodies that functioned thereunder were given the power to make laws for the United States.

Section 1 of Article I of the Federal Constitution provides:

> "All legislative powers herein granted shall be vested in a Congress of the United States."

Section 8 of Article I of the Federal Constitution provides:

> "Congress is authorized to make all laws which shall be necessary and proper for carrying into execution general powers."

Congress is not permitted to delegate or to transfer to others the essential legislative functions vested in it.

See *Schechter* case, supra, at page 529.

At the outset we observe in the *Schechter* case, supra, the Court held that the delegation of purported power by the Act to the President constituted an un-

lawful delegation of power. We submit that it necessarily follows that the intent on the part of Congress to authorize the President to redelegate power which was originally unlawfully delegated to him was without avail and itself constituted an unlawful redelegation of unlawful delegated power.

We note that the Commodity Credit Corporation was not created by Congress itself as were the corporations heretofore referred to. (See pp. 14-18.) On the other hand Section 2 of the N. R. A. *purported to allow the President to create* such agencies *as he might find necessary to effectuate the policy of the N. R. A.* Having this in mind we ask the Court to note the following language found at page 55 of the *Butler* case:

> "* * * It will be observed that the secretary is not required, but is permitted, if, in his uncontrolled judgment, the policy of the Act will so be promoted, to make agreements with farmers * * * upon such terms as he may think fair and reasonable."

Clearly we have here an unconstitutional delegation of legislative power.

See

Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter v. U. S., 295 U. S. 495;
Field v. Clark, 143 U. S. 649;
United States v. Grimaud, 220 U. S. 506;
Hampton & Co. v. United States, 276 U. S. 394;
Williamsport Wire Rope Co. v. United States, 277 U. S. 551;
Blair v. Oesterlein Machine Co., 275 U. S. 220;
Heiner v. Diamond Alkali Co., 288 U. S. 502.

The doctrine established by the aforementioned cases has been reaffirmed by the United States Supreme Court in its most recent decisions, to-wit:

Mulford v. Smith, ... U. S. ......, 59 S. Ct. 648;
United States v. Rock Royal Cooperative Inc. et al., ... U. S. ...... (decided June 5, 1939);
Currin v. Wallace, ... U. S. ...... (decided Jan. 30, 1939).

In conclusion we submit that the Commodity Credit Corporation was unlawfully created and therefore in the eyes of the law has no existence because:

1. It was created to effectuate the purposes and policies of the N. R. A. which has been declared unconstitutional by the United States Supreme Court.

2. It was allegedly created as a means to control a field reserved to the respective states, to-wit: local agricultural production.

3. The Act under which it was purportedly created unlawfully attempted to redelegate to the President legislative powers which it unlawfully delegated to the President in the first instance.

For all or any of these reasons we submit that the Commodity Credit Corporation has no constitutional existence. That, therefore, the appellants have the power to tax producers of cotton, which has been pledged to the Commodity Credit Corporation, when the cotton is situated within the boundaries of the County of Fresno, State of California, on the first Monday in March.

II. THE APPELLANTS MAY LEGALLY IMPOSE A PERSONAL PROPERTY TAX ON COTTON, WITHIN ITS JURISDICTIONAL BOUNDARIES, PLEDGED TO THE APPELLEE AND MAY THEREAFTER EFFECT COLLECTION OF THAT TAX.

It is our position herein that even if we are in error in Argument I, supra, nevertheless the appellants may impose the tax in question because the imposition of such tax does not unlawfully burden the United States or its alleged instrumentality, the appellee herein.

A. IMMUNITY FROM STATE TAXATION WILL NOT BE IMPLIED.

In

> *Graves v. O'Keefe,* .... U. S. ...., 59 S. Ct. 595, 598,

the Court established the following test in determining whether a federal instrumentality was exempt from state taxation:

> "* * * Congress has given no information for any purpose either to grant or withhold immunity from state taxation of the salaries of the corporation employees, *and the Congressional intention is not to be gathered from the statutes by implication.* See C. F. Baltimore National Bank v. State Tax Commission, 297 U. S. 209 * * *" (Emphasis added.)

Public Act No. 442 of the 75th Congress (approved March 8, 1938) provides, in part, as follows:

> "Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be

> exempt from federal, state, municipal and local taxation. (Except surtaxes, estate, inheritance, and gift taxes.) The Commodity Credit Corporation, including its franchise, its capital, reserves and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, County, Municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to state, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

We ask the Court to note that this Statute was not enacted until March 8, 1938; on the other hand, the taxable status of the cotton, in question herein, was fixed on the first Monday in March, 1938, to-wit, March 7, 1938. On March 7, 1938 there was no statute enacted by Congress which even purported to grant any exemption from state taxation to the Corporation and the *O'Keefe* case, supra, definitely establishes that exemption or immunity cannot be implied.

After March 8, 1938 (effective date of Public Act No. 442, supra) certain tax immunity was purportedly granted to the Corporation. However, we note there is no mention of immunity in that Statute for whatever interest the Corporation might be said to have acquired by virtue of the fact that it had made a loan to a private individual and received a note and, as security for that note, there had been pledged to it

the cotton produced by the borrower. The only reference or phrase in the Statute which the appellee can rely upon is the word "capital". We submit that it is obvious that whatever interest might be said to have been acquired by the Corporation in the cotton in question was not any part of the "capital" of the Corporation; Ergo, the Statute as enacted on March 8, 1938 did not *expressly* grant any immunity from taxation for the pledgee's interest acquired by the Corporation to the cotton in question herein. As stated by the United States Supreme Court in the *O'Keefe* case, supra, that immunity cannot be implied.

In

Helvering v. Gerhardt, 304 U. S. 405, 411n,

it is said:

> "* * * It follows that in considering the immunity of federal instrumentalities from state taxation two factors may be of importance which are lacking in the case of a claimed immunity of state instrumentalities from federal taxation. Since the acts of Congress within its constitutional power are supreme, the validity of state taxation of federal instrumentalities must depend (a) on the power of Congress to create the instrumentality and (b) its intent to protect it from state taxation. Congress may curtail an immunity which might otherwise be implied, Van Allen v. The Assessors, 3 Wall. 573, or enlarge it beyond the point where Congress being silent, the Court would set its limits."

Bank v. Supervisors, 7 Wall. 26, 30, 31;

Thomson v. Pacific Rd., 9 Wall. 579, 588, 590;

Shaw v. Gibson-Zahniser Oil Corporation, 276 U. S. 575, 581;
James v. Dravo Contracting Co., 302 U. S. 134, 161.

At the outset herein we refer the Court to our Argument I, supra, wherein we contended that the Commodity Credit Corporation was unlawfully created in that (1) the Corporation was not created as a means of carrying out a delegated power of the federal government and (2) Congress unlawfully purported to authorize an unlawful delegation of legislative power by the President to the Corporation.

Assuming, for the purpose of argument, that we are in error in this contention, we now come to the second test set forth in the *Gerhardt* case, supra, and refer the Court to what we have heretofore said in regard to the failure of the Statute to exempt whatever interest the Commodity Credit Corporation may have acquired in the cotton in question herein, by virtue of the fact that the cotton was pledged to the Corporation as security for the loan made by the Corporation.

B. THE TAX IMPOSED BY THE APPELLANTS DOES NOT UNLAWFULLY BURDEN THE UNITED STATES.

We now come to the third and fundamental test applied by the United States Supreme Court in two of its most recent opinions, to-wit: *Graves v. O'Keefe,* supra, and *State Tax Commission of Utah v. Van Cott,* .... U. S. ...., 59 S. Ct. 605, in determining the right of a state to tax an instrumentality of the federal government.

At page 598 of the *O'Keefe* case, it is said:

"* * * The present tax is a non-discriminatory tax on income applied to salaries at a specified rate. It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. It is laid upon income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds and not from the funds of the government, either directly or indirectly. The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable, New York ex rel. Cohn v. Graves, 300 U. S. 308, 313, 314, 57 S. Ct. 466, 467, 81 L. Ed. 666, 108 A. L. R. 721; Hale v. State Board, 302 U. S. 95, 108, 58 S. Ct. 102, 106, 82 L. Ed. 72; Helvering v. Gerhardt, supra; cf. Metcalf & Eddy v. Mitchell, 269 U. S. 514, 46 S. Ct. 172, 70 L. Ed. 384; Fox Film Corp. v. Doyal, 286 U. S. 123, 52 S. Ct. 546, 76 L. Ed. 1010; James v. Dravo Contracting Co., supra, page 149, 58 S. Ct. page 216; Helvering v. Mountain Producers Corp., 303 U. S. 376, 58 S. Ct. 623, 82 L. Ed. 907, and the only possible basis for implying a constitutional immunity from state income tax of the salary of an employee of the national government or of a governmental agency *is that the economic burden of the tax is in some way passed on so as to impose a burden on the national government tantamount to an interference by one government with the other in the performance of its functions.* * * *" (Emphasis added.)

The fact that the expenses of the one government might be lessened if all those who dealt with it were exempt from taxation by the other was not thought to be an adequate basis for tax immunity in the following cases:

Metcalf and Eddy v. Mitchell, 269 U. S. 514;
Route No. 1 Oil Corporation v. Bass, 218 U. S. 379;
Burnett v. Jergens Trust, 288 U. S. 508;
James v. Dravo Contracting Co., 302 U. S. 134;
Helvering v. Mountain Producers Corporation, 303 U. S. 376.

It must be remembered that the tax which the appellants have levied upon the cotton in question was not imposed upon the appellee but upon the producers of the cotton. It may well be that during the course of this litigation those producers might repay the Commodity Credit Corporation and thus the question would become moot, for the Corporation then would not claim any interest in the cotton. It is inconceivable to us that any Court would hold that the appellants cannot tax cotton which is physically located within its boundaries and has a taxable status on the first Monday in March merely because the Corporation has made a loan to the producer of that cotton and as security therefor has received a pledge of the cotton. It may well happen that on the day before the first Monday in March of any particular year the producer of cotton could take a loan from the Corporation and pledge the cotton as security therefor and on the day after the first Monday in

March repay that loan to the corporation and that crop (which will receive the protection of the County of Fresno throughout the following ensuing year and for which protection other property within that community has to pay its share of governmental expense by paying taxes on such property) will escape its share of the tax burden imposed by the appellants for rendering protection to all property and owners thereof within its boundaries. We submit that the implied immunity doctrine was never intended to be extended that far. Assuming, for the moment, that the appellants, in levying a tax upon the producer of the cotton, is to some extent levying a tax upon property belonging to the Commodity Credit Corporation we submit that the imposition of that tax is no wise constitutes an unlawful burden upon the United States so as to bring the tax within the prohibited limits of the implied immunity doctrine.

In *United States Spruce Production Corporation v. Lincoln County et al.*, 285 Fed. 388, 390, 391, it is said:

> "The cases seem to be uniform in support of the principle, which is concretely stated in Thomson v. Union Pacific Rd., 9 Wall. 579, 591 (19 L. Ed. 792), in the following language: 'We fully recognize the soundness of the doctrine that no state has a "right to tax the means employed by the government of the Union for the execution of its powers". But we think there is a clear distinction between the means employed by the government and the property of the agents employed by the government. Taxation of the agency is taxation of the means; taxation of the

property of the agent is not always, or generally, taxation of the means. * * *' "

The language of the headnote in *Railroad Co. v. Peniston,* 85 U. S. 5 is pertinent:

> "The exemption of agencies of the Federal Government from taxation by the states is dependent not upon the nature of the agents, nor upon the mode of their constitution, nor upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or hinder the efficient exercise of their power."

In *Clallam v. U. S.,* 263 U. S. 341, 344, 345, it is said:

> "* * * The State claims the right to tax on the ground that taxation of the agency may be taxation of the means employed by the government and invalid upon admitted grounds, but that taxation of the property of the agent is not taxation of the means. We agree that it 'is not always, or generally, taxation of the means', as said by Chief Justice Chase in Thomson v. Pacific Railroad, 9 Wall. 579, 591. But it may be, and in our opinion clearly is when as here not only the agent was created but all the agent's property was acquired and used, for the sole purpose of producing a weapon for the war. *This is not like the case of a corporation having its own purposes as well as those of the United States and interested in profit on its own account.* The incorporation and formal erection of a new personality was only for the convenience of the United States to carry

out its ends. *It is unnecessary to consider whether the fact that the United States owned all the stock and furnished all the property to the corporation taken by itself would be enough to bring the case within the policy of the rule that exempts property of the United States * * * Van Brocklin v. Tennessee,* 117 U. S. 151. *It may be that if the United States saw fit to avail itself of machinery furnished by the State it would not escape the tax on that ground alone.* But when we add the facts that we have recited we think it too plain for further argument that the tax could not be imposed. See United States Spruce Production Corporation v. Lincoln County, 285 Fed. 388; United States v. Coghlan, 261 Fed. 425; King County v. United States Shipping Board Emergency Fleet Corporation, 282 Fed. 950. We answer the second question, No.'' (Emphasis added.)

The United States Supreme Court in its recent decisions rendered during its October term, 1938, clearly indicated that it is now of the opinion that the mere fact there exists an instrumentality of the federal government is not conclusive of the question whether the implied constitutional immunity doctrine prevents taxation by a state of that instrumentality. The Court now requires proof of an actual burden upon the national government which interferes with the operation of an essential governmental function. Assuming as we have on this point that the Commodity Credit Corporation did ''acquire some property'' in the cotton in question herein, we fail to see how a local tax on the actual value of the cotton could

possibly burden the United States. A *nondiscriminatory tax* of this nature must be borne equally by all property located within the boundaries of the taxing agency. Unless this doctrine of implied immunity is fairly construed we can see that the taxing powers of the various states in the Union will be materially crippled by virtue of the present tendency of the national government to create more and more corporations and to extend to them functions which were hitherto unknown to the federal government. The appellants in *taxing this property* did not, necessarily, *tax the means* adopted by Congress to effectuate a power (which we will assume to exist) delegated to the federal government. As previously pointed out *taxation of the means is that which is prohibited and not the taxation of property unless taxation of the property is also taxation of the means.*

The effect upon the state and its political subdivisions if appellee's theory of immunity is upheld, is well expressed by Chief Justice Chase in *Thomson v. Union Pacific Rd. Co.,* 9 Wall. 579, 591, 592, where he said:

> "We perceive no limit to the principle of exemption which the complainant seeks to establish which would remove from the recent state taxation all the property of every agent of the government, every corporation engaged in the transportation of mail or government property of any description by land or water, or in supplying materials for use by the government or in performing any service of whatever kind by claiming benefit of the exemption the amounts of the

property now held by such corporation, and having relation more or less direct to the national government and its service is very great. *And this amount is continually increasing; so that it may admit of question whether the whole income of the property which will remain liable to state taxation if the principle contended for is admitted and applied in its fullest extent, may not ultimately be found inadequate to the support of the state government.* * * *" (Emphasis added.)

Further at pages 590, 591, the Court said:

"We do not think ourselves warranted, therefore, in extending the exemption established by the case of McCulloch v. Md. beyond its terms. *We cannot apply it to the case of a corporation deriving its existence from state law exercising its franchise under state law, holding its property within state jurisdiction and under state protection.* * * *" (Emphasis added.)

During the last six years there have been created many corporations to perform functions hitherto unknown and unrelated to the federal government, each corporation lending its money to citizens residing in the various states of the Union on all types of commodities, businesses and property. If the doctrine of immunity set forth by the appellee is upheld by this Court it may well cause the various states of the Union to ponder whether the remaining property within their boundaries can sustain the resulting burden placed upon it in sustaining the operation of those governments. It may well be that the various

states may be forced to limit their governmental activities and thus the national government will indirectly be responsible for breaching the constitutional guarantee given to every state that it shall maintain a republican form of government. *The denial of the power to impose a nondiscriminatory tax is the power to destroy.*

In *National Bank v. Commonwealth,* 9 Wall. 353, 362, the Court observed that:

> "The principle we are discussing (tax exemption) has its limitations, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the Federal Government are only exempted from state legislation, so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustified invasion of the rights of the states."

Again, when California levied taxes upon a railroad built largely with federal funds, performing federal services, the Court while denying the right of the state to tax the franchise, upheld the tax upon the property of the railroad and said:

> "There is a clear distinction between the means employed by the government and the property of the agent employed by the government. Taxation of the agency is taxation of the means; taxa-

tion of the property of the agency is not always, or generally, taxation of the means."

Thomson v. Union Pacific Rd. Co., 9 Wall. 579, 591.

In

Union Pacific Rd. Co. v. Peniston, 85 U. S. 5, at p. 30,

the Court said:

"It cannot be said that a state tax which remotely affects the exercise of a Federal power is for that reason prohibited by the constitution. To hold that would be to deny to the State all powers to tax persons or property."

In those cases where the taxation of the property of the agent has been upheld it has been upheld because it was not regarded as a "tax" upon the "means" employed by the government in carrying out legitimate purposes.

In *McCulloch v. Maryland,* supra, we find that the fundamental basis upon which the Court relied, in denying a state the right to levy a tax upon bank notes of a National Bank, was that the tax was discriminatory in nature and was primarily designed to destroy an instrumentality of the federal government which was created as a means to serve an essential governmental power. The majority opinion, as well as Justice Frankfurter's concurring opinion, in the *O'Keefe* case, supra, leaves no doubt as to the present Supreme Court's understanding of the *McCulloch* case. Their opinions recognized that the State in the

McCulloch case was trying to impose a *discriminatory* tax upon an instrumentality of the federal government.

We ask the Court to note the judicial attitude of the United States Supreme Court in the *McCulloch* case, supra, during the period when the Federal Government confined itself to activities logically, as well as traditionally, governmental in nature. We further ask the Court to note the same judicial attitude of that Court during its October terms, 1937 and 1938, when that Court, speaking in the *O'Keefe, Van Cott* and *Gerhardt* cases, definitely returned to the fundamental doctrine established in *National Bank v. Commonwealth, Union Pacific Rd. Co. v. Peniston, Thomson v. Union Pacific Rd.* and the *McCulloch* cases by laying down once more the principle that a state tax which remotely affects a Federal instrumentality cannot for that reason alone be said to be prohibited by the Federal Constitution.

We also ask the Court to note that during the interim between *McCulloch v. Maryland,* supra, and the *O'Keefe* case, supra, the United States Supreme Court did, at various times, ignore the fundamental limitations of the *McCulloch* case and decided that if a federal instrumentality was involved the Court *would assume* that a state tax constituted an unlawful burden within the implied immunity doctrine.

It is our contention that the Supreme Court has established as one of the most essential tests in applying the doctrine the requirement that the federal

government prove that the tax will be a burden which will impair the efficiency of a function used to carry out a federal power. We challenge the appellee to show in any way that the imposition of this tax will constitute such a burden that the efficiency of the Commodity Credit Corporation would be impaired to such an extent that the state would be interfering with a lawful governmental function.

While we have briefly quoted from the *O'Keefe, Gerhardt* and *Van Cott* cases, supra, we ask the Court, in its consideration of those cases, to note that the Supreme Court has reaffirmed the ancient doctrine established by such cases as *McCulloch, Union Pacific Rd. Co. v. Peniston,* and *National Bank v. Commonwealth,* supra. It is our contention that the United States Supreme Court has limited the application of the implied immunity doctrine to those cases where a tax by either government upon the instrumentality of the other will actually and immediately impair the efficient performance by an instrumentality of a function lawfully granted to it.

C. CONGRESS DOES NOT HAVE THE POWER, IRRESPECTIVE OF THE IMPLIED IMMUNITY DOCTRINE, TO EXEMPT A FEDERAL INSTRUMENTALITY FROM STATE TAXATION.

We have heretofore established (see Argument II A, supra) we believe, that Congress has not expressed any intent to exempt from taxation the cotton involved herein. We have further established (see Argument II B, supra) that in the absence of such express exemption that the United States Supreme Court

would not grant to the cotton involved herein immunity from state taxation.

It is now our contention that even if Congress has purported to grant an exemption, nevertheless, it is bound by constitutional limitations.

Inasmuch as Congress has only those powers delegated to it by the Federal Constitution it has no power to exempt a federal instrumentality from state taxation unless the Constitution of the United States authorizes and recognizes the exemption. To determine whether the Constitution authorizes the same it becomes necessary to examine the decisions of the United States Supreme Court applying the implied constitutional immunity doctrine.

It is our contention that the Court in *Graves v. O'Keefe,* supra, has definitely and clearly limited the implied constitutional doctrine. As we have heretofore pointed out the imposition of a tax on the cotton involved herein, by the appellants, did not constitute such a burden as to impair the efficiency of a function granted to the Corporation. (Assuming for the purposes of this argument that its functions are to carry out a delegated power of the federal government.)

Therefore, we submit that even if Congress has attempted to grant immunity from this tax Congress has acted without constitutional authorization.

III. THE COMMODITY CREDIT CORPORATION HAS NO "PROPERTY" IN THE COTTON TAXED BY THE APPELLANTS.

Section 8 of Article XIII of the Constitution of the State of California requires that the Legislature shall by law require the taxpayer to provide an annual statement to the County Assessor setting forth all property in his possession or control as of the first Monday in March. Said section provides as follows:

> "The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March."

Section 3628 of the Political Code of the State of California, the legislative enactment called for by Section 8 of Article XIII, supra, provides as follows:

> "Except as otherwise provided in the Constitution of this state all taxable property shall be assessed in the county * * * in which it is situated * * *. The assessor must, between the first Monday in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation * * * and must assess such property to the persons by whom it was *owned* or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding * * *."

The Court has determined that Section 8 of Article XIII and Section 3628 of the Political Code clearly designate the time *when the taxable status of property, in California, becomes fixed.*

In *Dodge v. Nevada National Bk.*, 109 Fed. Rep. 726, at pages 731-732, the Court said:

> "The contention of counsel for appellant that the provisions of the Constitution and of the Codes do not prohibit the Assessor from making a valid assessment after the statute became a law, because they only mention the time 'when the ownership and valuation of property should be determined', falls far short of giving a proper construction of the Constitution and Codes with reference to the application to the real question under consideration. *The entire system of taxation in the State of California plainly contemplates the existence of property liable to be assessed for taxes, and that its assessment, at whatever date actually made, shall relate to some fixed period of time, and that the taxable status of the property is to be determined by its condition on that day. The Constitution and Codes clearly designate the time when the assessable character of property becomes fixed, to-wit: at 12:00 o'clock, meridian, on the first Monday in March;* and the question here involved must be determined with reference to that date. The initial right of the Assessor to assess any property during the assessing period relates to that day. The Assessor is not authorized to assess any property that is exempt from taxation on that day. The owner or party in control of property is not required to include in his list, to be given to the Assessor,

> any property not subject to taxation on the first Monday in March of each year. That is the time the lien on the property for the taxes attaches, regardless of the date when the assessment is made." (Emphasis added.)

Also see

East Bay Municipal District v. Garrison, 191 Cal. 680, 690.

Section 3716 of the Political Code of the State of California gives to a tax the effect of a judgment against the owner of the property. Section 3821 of the Political Code of the State of California authorizes the assessor of a county to seize and sell any personal property owned by the person against whom the tax was assessed.

The Court will note that in the instant matter the cotton in question was pledged to the Commodity Credit Corporation at various times during the year 1938, some of it being pledged before the first Monday in March, 1938, and some pledged after the first Monday in March, 1938. (Paragraph IV of complaint—Tr. pp. 12-14.) Certainly as to that cotton which was pledged to the Corporation *after* the first Monday in March, 1938, there can be no question but that the cotton had a taxable status within the purview of the *Dodge* and *Garrison* cases, supra. As to the cotton pledged to the Corporation *prior* to the first Monday in March and that cotton pledged on that date the Court must determine for the purposes of this argument whether the Corporation has any "property" in

the cotton, as such, by virtue of the fact that it is the pledgee of said cotton.

In discussing this point we are assuming, arguendo, that the following points may be established by the appellee:

(1) That the Corporation was created as a means of performing some delegated power of the federal government;

(2) That the Corporation was created pursuant to a lawful delegation of legislative power by Congress to the President;

(3) That if the Corporation acquired "property" in the cotton, as such, by virtue of the fact that the cotton was pledged to it, the appellants in taxing the cotton would be imposing an unlawful burden upon a federal instrumentality.

We do not concede in any manner that any of the above points are true, but, on the other hand, we insist as we have previously pointed out, each of them is without merit and the tax levied herein was lawfully imposed pursuant to the taxing power of the appellants.

It is our position that the Corporation acquired no "property" by reason of the fact that the cotton was pledged to the Corporation. We point out to the Court that the tax was not levied on any interest or property which the Corporation may claim to have in the cotton. On the other hand the assessment was made on the producers and owners of the cotton on

the first Monday of March, 1938. We further contend that the levy of said assessment did not impede any activity of the federal government. It is our position that the Corporation did not acquire by virtue of the pledge any "property" in the cotton, as such. It did, we admit, acquire a "special property" which amounts merely to the right to possession of the pledged property and the right to sell the same in case the pledgor does not repay his debt.

In support of our contentions herein we call the Court's attention to following statutory provisions of the State of California and decisions of various Courts.

Section 2986 of the Civil Code of the State of California provides as follows:

> "A pledge is a deposit of personal property by way of security for the performance of another act."

Section 2987 of the Civil Code of the State of California provides as follows:

> "Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge."

In *City Bank Farmers' Trust Co. v. Bowers,* 68 Fed. (2d), the Court said, at page 913:

> "* * * The interest of a pledgee has indeed somewhat baffled common lawyers, but it is usually said that 'title' remains in the pledgor, and that the pledgee has only a 'special property';

(citing cases) * * * The pledgee in substance has not more than a power to sell the pledge upon default and to recoup * * *"

In *Bank of America etc. Ass'n v. Figueroa,* 218 Cal. 281, 286 (22 Pac. (2d) 712), the Court said:

"* * * As pledgee of the security the Bank of America did not acquire title thereto * * *"

In *St. Paul Fire & M. Ins. Co. v. Garza County W. & M. Ass'n,* 93 Fed. (2d) 590, the Court said:

"* * * Its claim that as pledgee the Commodity Credit Corporation is owner will not do * * *"

"In Arcola Sugar Mills Co. v. Burnham, 5 Cir., 67 F. (2d) 981, we pointed out that, while a pledgee has some of the rights of an owner, he is, until in the manner prescribed in the pledge he has become the owner, still a pledgee."

In 21 *Ruling Case Law,* at pages 649, 650, 651, it is said:

"With regard to the respective rights of the parties to the contract of pledge it is well settled that the general property in the thing pledged remains in the pledgor (citing Brewster v. Hartley, 37 Cal. 15, and Anderson v. Pacific Bank, 112 Cal. 598, 44 Pac. 1063), and only a special property vests in the pledgee. (Citing California cases.) While he has the right to retain the property pledged until the debt for which it was pledged is fully satisfied or has been otherwise discharged the pledgee *acquires no interest in the property* (emphasis ours), except as a security

> for his debt * * * The general property in the pledge remains in the pledgor after as well as before default. * * *"

Also see:

Talty v. Freedman's Savings & Trust Co., 93 U. S. 321, 324;

Yeatman v. Savings Institution, 95 U. S. 764, 766.

In *People v. Kempner*, 139 N. Y. S. 440, 443, the Court defines "special property" which is acquired by the pledgee as being the right to possession of the pledged property and the right to sell the pledged property in case of a default on the part of the pledgor.

In *Rissman v. National Thrift Corporation*, 139 Cal. App. 447, 34 Pac. (2d) 230, the Court cited with approval the case entitled *"Simansky v. Clark*, 147 Atl. 205" (Me.), wherein the Supreme Court of the State of Maine defined the respective rights of a party to a pledged contract as follows: The general property remains in the pledgor and the pledgee does not acquire *any interest in the pledged property*, save as security for the payment of his debt.

In 21 *California Jurisprudence*, at pages 328, 329, 330, it is said:

> "The general rule that notwithstanding any agreement to the contrary a lien or a contract for a lien transfers no title to the property subject to the lien, is applicable to pledges. While a pledgee has a special property or interest in a

pledge, the title or general property remains in the pledgor * * * The pledgee has a special property in a pledge which entitles him to possession until discharge of the obligation secured, and to protect which he may maintain detinue, replevin or trover against anyone who has no higher equitable or other superior right. * * *"

In 16 *California Jurisprudence,* page 315, it is said:

"* * * A mortgage lien is not an interest in the property, but a mere lien thereon. Therefore, one having naught but a mortgage lien may not quiet title as against the owner of the legal title."

In *Robinson v. Raquet,* 1 Cal. App. (2d) 533, 544 (36 Pac. (2d) 821), the Court said:

"* * * It has been repeatedly held that where personal property is pledged the general property and title remain in the pledgor, subject only to a lien in favor of the pledgee for the amount of his debt."

Also see:

White v. Ross, 36 Cal. 414, 428;

Brewster v. Hartley, 37 Cal. 15, 25 (99 Am. Dec. 237);

Cross v. Eureka Lake Etc. Canal Co., 73 Cal. 302, 306 (14 Pac. 885, 2 Am. St. Rep. 808);

Sparks v. Caldwell, 157 Cal. 401 (108 Pac. 276);

People v. Robinson, 107 Cal. App. 211, 220 (290 Pac. 470);

Tracy v. Stock Assur. Bureau, 137 Cal. App. 573, 579 (23 Pac. (2d) 41);
Civ. Code, Section 2888.

In defining the rights of parties under a pledge we realize that the Courts have indulged freely in the use of words; but nevertheless, upon a careful scrutiny and thorough consideration of the authorities, we submit that the Courts consistently hold that no interest is acquired by the pledgee in the pledged property, as such, that is to say, no interest amounting to ownership in the property is acquired.

See:

Cottonwood-Anderson Irrigation Dist. v. Klukkert, 97 Cal. Dec. 348, 352 (Pac. 2d);
State-Land-Settlement Bd. v. Henderson, 197 Cal. 470, 480, 241 Pac. 560.

Obviously, therefore, inasmuch as the appellants are not subjecting to taxation the "special property" of the Corporation, the doctrine of implied immunity is not applicable; and accordingly, it logically follows that the cotton, which is otherwise taxable, does not become non-taxable because the Commodity Credit Corporation, an alleged instrumentality of the Federal Government, has assumed the relationship of pledgee to the cotton. In other words, the appellants are not attempting to collect taxes on any property "belonging to" the appellee.

In *Erie Rd. Co. v. Tompkins,* ......U. S......., 58 S. Ct. 817 (decided Apr. 25, 1938), the Court laid down the rule that in Federal Courts, except in matters gov-

erned by the Federal Constitution, or by acts of Congress, the law to be applied in any case is the law of the states. Further, the phrase "laws of the several states" as used in the statute requiring Federal Courts to apply laws of the several States, except in matters governed by the Federal Constitution or Statutes, includes not only State statutory laws, *but also State decisions on questions of general law.* Therefore, it is obvious that the Court is bound by the statutory and case law of the State of California which establish that a pledgee of tangible personal property does not acquire any interest in pledged property.

Once it is determined by this Court that the Corporation did not acquire any property in the cotton, as such, the Court must, regardless of its opinion on the other points raised herein, uphold the right of the appellants to levy the tax in question. The tax would then be held to be imposed upon property of a private individual located within the County of Fresno, State of California, and there could not possibly be any burden imposed upon the Corporation or the United States.

IV. NONE OF THE COTTON PLEDGED TO THE COMMODITY CREDIT CORPORATION AND TAXED BY THE APPELLANTS HEREIN "BELONGED TO" THE UNITED STATES.

Section 1 of Article XIII of the Constitution of the State of California, provides, in part, as follows:

> "All property in the State except as otherwise in this Constitution provided, not exempt under

> the laws of the United States, shall be taxed in proportion to its value, * * * and further provided that property * * * as may belong to the United States, * * * shall be exempt from taxation * * *"

Section 3607 of the Political Code of the State of California provides:

> "All property in this state, not exempt under the laws of the United States, excepting * * * such as may belong to the United States, * * * is subject to taxation, * * *"

If we may assume, arguendo, that "some property" in the cotton taxed herein belongs to the Corporation, the question remains whether that "property" *belongs to the United States.*

This question becomes pertinent only if this Court should decide: (1) That a validly created corporation has acquired "property" in the cotton taxed and (2) that the tax imposed by appellants does not violate the implied constitutional immunity doctrine.

In *Anderson-Cottonwood Irrigation District v. Klukkert,* 97 Cal. Dec. 348, 352, the Court in interpreting the phrase "belongs to the United States" in the California Constitution, said:

> "The word 'belong' is applied alike and with the same force and meaning to the United States, this state, and the counties and municipalities, and it seems to us was employed to denote an unqualified ownership of the property * * *"

It is our contention herein that even though the Commodity Credit Corporation might be said to have an unqualified ownership in certain of the property of the cotton involved herein, nevertheless none of the cotton "belongs to" the United States by virtue of that fact.

In *Keifer & Keifer v. Reconstruction Finance Corporation*, ...U. S......., 59 S. Ct. 516, the Court said:

> "Therefore, the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. U. S. v. Lee, 106 U. S. 196, 213, 221; Sloan Shipyards v. U. S. Fleet, 258 U. S. 549, 567. For more than a hundred years corporations have been used as agencies for doing work of the government. Congress may create them 'as appropriate means of executing the powers of government, as, for instance, * * * a railroad corporation for the purpose of promoting commerce among the states'. Luxton v. North River Bridge Co., 153 U. S. 525, 529. But this would not confer on such corporations legal immunity even if the conventional to-sue-and-be-sued clause were omitted. * * *"

In *U. S. Shipping Board Emergency Fleet Corporation v. Wood*, 274 Fed. 893, at pages 899, 900, 901, it is said:

> "* * * It thus appears that the business of the Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and that its powers were not essentially different from those possessed by private

corporations. We think that no provision can be found either in the acts of Congress or in the charter of the company giving to the corporation or its stockholders any rights, privileges or obligations different from those possessed by any other corporation formed under the laws of the District of Columbia with respect to its business.

It is true that all the stock, except a few shares issues to qualify the members of the board of trustees, is owned by the United States. But we do not think that fact is of controlling significance, especially in view of the provision on that subject in section 11 of the Act of September 7, 1913. While it was provided that the United States Shipping Board might, for and on behalf of the United States, subscribe to and purchase the stock, it was also provided that the Board might, with the approval of the President, sell any or all of the stock of the United States in the corporation, subject to the restriction that the United States was at no time to be a minority stockholder. The fact that the United States owns stock in a corporation does not invest the corporation with the character of sovereignty, or invest it with the privileges and immunities of the sovereign. In United States Bank v. Planters' Bank of Georgia, 9 Wheat. 904, 6 L. Ed. 244, the Supreme Court in 1824, had before it the case of a corporation in which the state of Georgia was a stockholder. A suit was brought in a United States court against the corporation. Chief Justice Marshall, speaking for the court, declared that the state did not, by

becoming a corporator, identify itself with the corporation, and that the Planters' Bank of Georgia was not exempted from being sued in the federal courts by the circumstance that the state was a corporator. He said:

'It is, we think, a sound principle that, when a government becomes a partner in any trading company, it divests itself, so far as concerns the transaction of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. * * * The state of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation than are expressly given by the incorporating act.

The government of the Union held shares in the old Bank of the United States; but the privileges of the government were not imparted by that circumstance to the bank. The United States was not a party to suits brought by or against the bank, in the sense of the Constitution. So with respect to the present bank. Suits brought by or against it are not understood to be

brought by or against the United States. The government, by becoming a corporator, lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege which is not derived from the charter. We think, then, that the Planters' Bank of Georgia is not exempted from being sued in the federal courts, by the circumstance that that state is a corporator.'

In the above case the state of Georgia did not own all of the stock of the Planters' Bank, but that does not seem to us to be a material fact. In Salas v. United States, 234 Fed. 842, 148 C. C. A. 440, we had before us the question whether a conspiracy to defraud the Panama Railroad Company was a conspiracy to defraud the United States. We held that it was not, notwithstanding the fact that the United States owned the whole capital stock of the railroad company, and was solely interested in its profits or losses. We decided that—

> 'When the United States enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation. * * * Although it absolutely owns the Panama Railroad Company and is the only person profiting or losing by its activities, still the railroad company sues and is sued just like any other corporation, in its own name.'

See, also, Lord & Burnham Co. v. Fleet Corporation (D. C.), 265 Fed. 955, 957, where it was declared that—

> 'Ownership by the government of all of the stock of the corporation does not change the

situation, and it remains a corporation just the same as though it had a dozen or more stockholders.'

The decision of the Supreme Court in United States v. Strang, 254 U. S. 491, 41 Sup. Ct. 165, 65 L. Ed. ......, rendered on January 3, 1921, appears to us to lead logically to the conclusion we have reached upon the matter now under consideration. The Criminal Code (section 41 (Comp. St. Sec. 10205)) makes it a criminal offense for an officer or agent of any corporation, joint-stock company, association, or firm to be employed or act as an officer or agent of the United States for the transaction of business with such corporation, joint-stock company, association, or firm. It appeared that Strang, while he was a member of a firm of ship outfitters, was at the same time employed by the Fleet Corporation as an inspector, and in that capacity signed and executed three separate orders to his firm for repairs and alterations on a steamship. He was tried on an indictment which charged him with a violation of the section of the Code above referred to. A demurrer to the indictment was sustained in the Court below, and the Supreme Court affirmed. *It was argued by the government that the Fleet Corporation was an agency or instrumentality of the United States, formed only as an arm for executing purely governmental powers and duties vested by Congress in the President and by him delegated to it; that the acts of the Corporation were the acts of the United States;* that therefore Strang in placing orders with his firm in behalf of the Fleet Corporation acted as an agent of the United States. The court in its opinion said:

'The corporation was controlled and managed by its own officers and appointed its own servants and agents, who became directly responsible to it. *Notwithstanding all its stock was owned by the United States, it must be regarded, as a separate entity.* Its inspectors were not appointed by the President, nor by any officer designated by Congress; they were subject to removal by the Corporation only and could contract only for it. In such circumstances we think they were not agents of the United States within the true intendment of section 41.' " (Emphasis added.)

The *Wood* case, supra, was affirmed in *Sloan Shipyards v. U. S. Fleet Corporation,* 258 U. S. 549, 570.

In *U. S. v. Marxen,* ...... U. S. ......, 59 S. Ct. 811, 813, it is said:

"Although an amendment of the National Housing Act authorized the Administrator to sue and be sued in any court of competent jurisdiction, State or Federal, it is not necessary in answering the present certificate to determine whether by this addition, the Congress intended to give the administrator *the status of a corporation, or other entity distinct from the United States* and such status, to confer on or withhold from claims of the Federal Housing Administration against bankrupts the advantages of Section 3466. (Sloan Shipyards Corporation v. U. S. Fleet Corporation, 258 U. S. 549, 570.) We can deal only with a claim of the Federal Housing Administration *assigned to the United States* after the adjudication in bankruptcy of the obligor. It is assumed that *such a claim 'belongs to' and is*

made by the United States. * * *" (Emphasis and parenthesis added.)

We submit that all of these cases definitely establish that if Congress has formed a Corporation under the laws of a State the Corporation has an existence separate and apart from the United States itself and is a separate entity distinct from the United States.

Therefore, it is our further contention that the "United States" does not own the cotton in question herein and the cotton does not "belong to" the United States within the purview of Section 1 of Article XIII of the Constitution of the State of California but on the other hand the cotton (assuming that any one other than the producer owns it) "belongs to" the Commodity Credit Corporation.

We submit that the appellee cannot claim *that the State of California has granted immunity from taxation* to the Corporation in regard to any "property" which it may have or claim to have in the cotton in question herein.

CONCLUSION.

We submit that the judgment of the District Court should be reversed.

Dated Fresno, California,
September 29, 1939.

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(Appendix Follows.)

Appendix.

Appendix

EXHIBIT "A"

EXECUTIVE ORDER NO. 6340.

AUTHORIZING THE FORMATION OF A CORPORATION TO BE KNOWN AS THE COMMODITY CREDIT CORPORATION.

WHEREAS, the Congress of the United States has declared that an acute emergency exists by reason of widespread distress and unemployment, disorganization of industry, and the impairment of the agricultural assets supporting the national credit structure, all of which affects the national public interest and welfare, and

WHEREAS, in order to meet the said emergency and to provide the relief necessary to protect the general welfare of the people, the Congress of the United States has enacted the following acts:

1. The Agricultural Adjustment Act, approved May 12, 1933.

2. The National Industrial Recovery Act, approved June 16, 1933.

3. The Federal Emergency Relief Act of 1933, approved May 12, 1933.

4. Reconstruction Finance Corporation Act, approved January 22, 1932.

5. The Federal Farm Loan Act, approved July 17, 1916.

6. The Farm Credit Act of 1933, approved June 16, 1933.

7. The Emergency Relief and Construction Act of 1932, approved July 21, 1932.

And whereas, in order, effectively and efficiently, to carry out the provisions of said acts it is expedient and necessary that a corporation be organized with such powers and functions as may be necessary to accomplish the purposes of said acts.

Now, therefore, under and by virtue of the authority vested in me by the National Industrial Recovery Act of June 16, 1933, it is hereby ordered that an agency, to-wit: a corporation, under the laws of Delaware, be created, said corporation to be named the Commodity Credit Corporation.

The governing body of said corporation shall consist of a board of directors composed of eight members, and the following persons, who have been invited and have given their consent to serve, shall be elected by the incorporators as such directors:

Henry A. Wallace, Secretary of Agriculture;

George N. Peek, Administrator, Agricultural Adjustment Administration;

Oscar Johnston, Director of Finance, Agricultural Adjustment Administration;

Henry Morgenthau, Jr., Governor, Farm Credit Administration;

Herman Oliphant, General Counsel, Farm Credit Administration;

Lynn P. Talley, Assistant to the Directors of the Reconstruction Finance Corporation;

E. B. Schwulst, Special Assistant to the Directors of the Reconstruction Finance Corporation;

STANLEY REED, General Counsel of the Directors of the Reconstruction Finance Corporation.

The office and principal place of business of said corporation outside of the State of Delaware shall be in the city of Washington, and branch offices may be established in such places within the United States as the said board of directors shall select and determine by and with the consent of the Secretary of Agriculture and the Governor of the Farm Credit Administration.

The capital stock of such corporation shall consist of 30,000 shares of the par value of $100 each.

The Secretary of Agriculture and the Governor of the Farm Credit Administration are hereby authorized and directed to cause said corporation to be formed, with such articles or certificate of incorporation, and by-laws, which they shall deem requisite and necessary to define the methods by which said corporation shall conduct its business.

The Secretary of Agriculture and the Governor of the Farm Credit Administration are authorized and directed to subscribe for all of said capital stock for the use and benefit of the United States. There is hereby set aside for the purpose of subscribing to the capital stock in said corporation the sum of $3,000,000 out of the appropriation of the sum of $100,000,000 authorized by Section 220 of the National Industrial Recovery Act and made by the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933. (Public No. 77, 73d Congress.)

It is hereby further ordered that any outstanding stock standing in the name of the United States shall be voted by the Secretary of Agriculture and the Governor of the Farm Credit Administration jointly, or by such person or persons as the said Secretary of Agriculture and the Governor of the Farm Credit Administration shall appoint as their joint agent or agents for that purpose. The Board of directors (other than the initial board of directors elected by the incorporators) shall be elected and any vacancies thereon shall be filled by the Secretary of Agriculture and the Governor of the Farm Credit Administration jointly, subject to the approval of the President of the United States.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE
October 16, 1933.

EXHIBIT "B"

(PUBLIC NO. 1—74th CONGRESS.)

AN ACT.

To extend the functions of the Reconstruction Finance Corporation for two years, and for other purposes.

*   *   *   *   *   *   *

SEC. 7. Notwithstanding any other provisions of law, Commodity Credit Corporation, a corporation organized under the laws of the State of Delaware as an agency of the United States pursuant to the Executive Order of the President of October 16, 1933, shall continue, until April 1, 1937, or such earlier date as may be fixed by the President by Executive Order to be an agency of the United States. During the continuance of such agency, the Secretary of Agriculture and the Governor of the Farm Credit Administration are authorized and directed to continue, for the use and benefit of the United States, the present investment in the capital stock of Commodity Credit Corporation, and the corporation is hereby authorized to use all its assets, including capital and net earnings therefrom, and all moneys which have been or may hereafter be allocated to or borrowed by it, in the exercise of its functions as such agency, including the making of loans on agricultural commodities. (49 Stat. 4.)

EXHIBIT "C"

(PUBLIC NO. 2—75th CONGRESS.)

An Act.

To continue the functions of the Reconstruction Finance Corporation, and for other purposes.

*　　*　　*　　*　　*　　*　　*

Sec. 2 (a). Section 7 of the Act approved January 31, 1935 (Public, Numbered 1, Seventy-fourth Congress), is hereby amended by striking from the first sentence thereof "April 1, 1937" and inserting in lieu thereof "the close of business on June 30, 1939"; Section 1 of the Act approved March 31, 1936 (Public, Numbered 484, Seventy-fourth Congress), is hereby amended by striking from the first sentence thereof "February 1, 1937" and inserting in lieu thereof "the close of business on June 30, 1939"; Section 9 of the Act approved January 31, 1935 (Public, Numbered 1, Seventy-fourth Congress), is hereby amended by striking from the first sentence thereof "June 16, 1937" and inserting in lieu thereof "the close of business on June 30, 1939". (50 Stat. 5.)

EXHIBIT "D"

(PUBLIC NO. 3—76th CONGRESS.)

(H. R. 4011)

An Act to continue the functions of the Commodity Credit Corporation and the Export-Import Bank of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) Section 7 of the Act approved January 31, 1935 (49 Stat. 4), as amended, is hereby further amended by striking from the first sentence thereof "June 30, 1939" and inserting in lieu thereof "June 30, 1941; (b) Section 9 of the Act approved January 31, 1935 (49 Stat. 4), as amended, is hereby further amended by striking from the first sentence thereof "June 30, 1939" and inserting in lieu thereof "June 30, 1941"; (c) Section 9 of the Act approved January 31, 1935 (49 Stat. 4), as amended, is hereby further amended by inserting before the period at the end of the last sentence thereof a colon and the following: "Provided further, That the Export-Import Bank of Washington shall not have outstanding at any one time loans or other obligations to it in excess of $100,000,000, the capital for which the Reconstruction Finance Corporation, when requested by the Secretary of the Treasury with the approval of the President, may continue to supply from time to time through loans or by subscription to preferred stock"; and (d) Section 4 of the Act approved March 8, 1938 (52 Stat. 108), is hereby amended by striking from the first sentence thereof "$500,000,000" and inserting in lieu thereof "$900,000,000". Approved March 4, 1939.

EXHIBIT "E"

COTTON PRODUCER'S NOTE.

On or before July 31, 1938, for value received, the undersigned promises to pay to the order of......... ...., payee, at the office of the Commodity Credit Corporation, Washington, D. C., ... dollars, with interest from the date hereof at the rate of 4 per centum per annum payable at maturity. The makers and endorsers severally waive presentment for payment, demand, protest, notice of protest, and notice of nonpayment of this note.

This note is secured by a pledge of warehouse receipts representing .... bales of cotton aggregating .... *pounds.*

Witness:

....

Name Address (Signature of Producer)

(Fill all blanks with ink, indelible, pencil, or typewriter in both note and advice of loan agreement. Only white copy marked original is to be executed; the colored copy marked duplicate is to be retained by the producer. No papers containing additions, erasures, or alterations will be accepted by Reconstruction Finance Corporation or Commodity Credit Corporation.)

Loan Agreement.

Print (Producer............ County.......) Print
or (Address....... R.F.D..... State....) or
(Post Office)
Type ( ) Type
to secure note of.............of $......... Payable
Date (Insert face amount)
to ....
(Name of payee)

1. The undersigned hereby sells, assigns, pledges, and/or hypothecates to said payee and any subsequent holder the following warehouse receipts for cotton as collateral security for the payment of the indebtedness as evidenced by the note referred to above in this loan agreement:

(Obtain information for schedule from warehouse receipts. If space insufficient, attach schedule firmly. Have producer and warehouseman identify same by signature. Note in space below that schedule is attached and fill in line marked: "Total" only.)

SCHEDULE OF WAREHOUSE RECEIPTS.

	Warehouse Receipt Number	Number Bales	Weight, pounds	Loan value per Pound	Amount
					$
Name of Warehouse..................................					
Address..					
All cotton securing this note must be in same warehouse.					
	Total			x x x	$

The undersigned producer represents and warrants that the cotton listed in the above or attached schedule is of the grade and staple eligible for a loan of the amount per pound set forth in the above or attached schedule, determined in accordance with paragraph 3 of the printed Instructions (1937-38 C. C. C. Cotton Form 1), and agrees that any subsequent determination of the grade and staple of such cotton, made by or under the direction of the Bureau of Agricultural Economics, United States Department of Agricul-

ture, shall be final, conclusive, and binding as to the true class of such cotton.

Warehouseman's Certificate and Waiver.

All charges on the cotton listed in the above or attached schedule are paid to August 1, 1937, or dates of warehouse receipts, whichever are later. This cotton is in existence, is undamaged, and is and will be kept under cover within a structure enclosed in such a manner that the cotton is adequately protected from weather damage. The warehouse receipts listed above or in the attached schedule state in their printed terms or are stamped "Insured". This cotton is insured against loss or damage by fire for the full market value and will be kept insured so long as the receipt is outstanding. Lien for all charges, including receiving, tagging, weighing, storing, sampling, turning out, and insurance, will not be claimed for more than 25 cents per bale for each full month and the proportionate part of 25 cents for each fractional part of a month, or the charges applicable under the warehouseman's established tariffs in existence at the date of the receipts, whichever is less. Commodity Credit Corporation may, by agents or otherwise, inspect the cotton, the warehouse, and the records of the warehouse at any time. The warehouseman agrees that if the cotton is ordered shipped by Commodity Credit Corporation, for the purpose of reconcentration or otherwise, shipments will be made promptly and storage charges will stop on receipt of shipping instructions and surrender of the warehouse receipts un-

less the cotton is shipped within a reasonable time, as determined by the Corporation. All cotton listed in the above or attached schedule is guaranteed to be of the grade and staple eligible for a loan of the amount per pound set forth in the above or attached schedule, determined in accordance with the provisions of paragraph 3 of the printed Instructions (1937-38 C. C. C. Cotton Form 1).

In consideration of the benefits accruing from the storage of said cotton, the undersigned warehouseman hereby agrees, in the event said cotton is subsequently determined by the Bureau of Agricultural Economics, United States Department of Agriculture, to be below the grade and staple eligible for a loan of the amount per pound stated in the above or attached schedule, to reimburse Commodity Credit Corporation for any loss on account of said loan to the extent of the difference per pound between the value of the lowest grade eligible for the loan made, as set forth in the above or attached schedule, and the actual value of said cotton determined by said Bureau of Agricultural Economics.

DATE..

....
Signature of warehouseman

By..
(Agent or officer-Title)

(Attention is called to paragraph (9) referring to the criminal section quoted at the end of this agree-

ment. Warehouseman's certificate must not be dated more than 5 days preceding date of above mentioned note)

2. In consideration of the loan evidenced by the aforementioned note, the undersigned represents and warrants to and agrees with all holders of the note as follows:

That the cotton represented by warehouse receipts listed herein or in the attached schedule was produced in 1937 by the undersigned as.................................. (State whether landowner, landlord, or tenant. If as tenant, landlord must execute lien waiver below. Landlord cannot borrow on tenant's share nor on cotton taken in on account).

That he is the owner of such cotton, has the legal right to pledge same, and that the beneficial title thereto is and always has been in the undersigned producer. (A misstatement or misrepresentation in regard to any of the foregoing renders the producer personally liable under this loan agreement, and subject to criminal prosecution under the provisions of Section 16 (a) of the Reconstruction Finance Corporation Act, as amended, printed at the end hereof).

List of Lienholders and Their Waiver and Consent Pledge.

The party making this loan agreement certifies and warrants that the cotton covered by this agreement is free and clear of any and all liens

We certify that we are the herein-named holders of liens on the cotton covered by this agreement and hereby authorize (1) the pledge of the same

and encumbrances except in favor of the lienholders listed herein below. If no liens, insert "None."

in accordance with this agreement and the above-described note and any extension or renewal thereof, and (2) redelivery of warehouse receipts on payments of the loan, and (3) payment of any proceeds of this loan and of the proceeds of the sale of such cotton or insurance proceeds to the party making this loan agreement.

Names of Lienholders Including Federal Agencies and Landlords.	Signature of Lienholders or Agents as Provided in Section 10 of 1937-38 C. C. C. Cotton Form 1
....	....
....	....
....	....

C. C. C. Cotton Form A

(Advice of Loan to be Detached)

Advice of Loan

Lending Agency Must Detach This Slip and Mail to Commodity Credit Corporation, Washington, D. C.

To: Commodity Credit Corporation
Washington, D. C.

....
Date

We have this day made Cotton Producer's Loan as follows:

9 Cent Loans No. Bales—Amount	8 Cent Loans No. Bales—Amount
7¾ Cent Loans No. Bales—Amount	Total Loan No. Bales—Amount

....
(Name of warehouse where cotton stored)

....
(Lending Agency)

....
(Address of warehouse City and State)

....
(Address of lending agency—City and State)

3. Any holder may declare the note immediately due and payable upon the occurrence of any of the following events:

(a) When and so long as the price of middling ⅞ inch spot cotton on the New Orleans market, as de-

termined by the Bureau of Agricultural Economics of the United States Department of Agriculture, shall be at or above 15 cents per pound.

(b) Upon discovery that the undersigned has made any misrepresentation herein or in connection with the loan evidenced by said note.

(c) Upon any breach of warranty of the undersigned in this loan agreement contained or upon any failure on the part of the undersigned to comply with the agreements referred to in paragraph (8).

(d) Upon the filing by the undersigned of a petition in bankruptcy or for a composition or extension of debts under the Bankruptcy Act.

4. After July 31, 1938, or on the happening and continuance of any of the foregoing events, any holder is authorized to place all or any part of said cotton in any pool or pools with any other cotton held by the holder under generally similar loan agreements, and, either by pool or separate contract, to sell, assign, transfer, and deliver the cotton or cotton documents, evidencing title thereto, at such time, in such manner, for cash or upon such terms and conditions, as such holder may determine, at any cotton exchange, or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and upon such sale, the holder may become the purchaser of the whole or any part of such collateral security.

5. *After deducting all fees, costs, and expenses incident to insuring, carrying, handling, and marketing the collateral and accounting to the undersigned producer, including reasonable attorney fees, the holder shall apply the residue of any sales proceeds or insurance proceeds toward the payment of the above-mentioned note, returning the overplus, if any, only to the undersigned, or his personal representatives, without right of assignment or substitution of any other party. The undersigned producer shall be and remain liable to the holder for any deficiency only in the event that he does not reduce cotton acreage or production in accordance with the provisions of paragraph 8 hereof, or has made any misrepresentation herein or in connection with the loan represented by the above-mentioned note, or in the event of a breach of warranty in this loan agreement contained.*

6. The undersigned agrees that if any Federal agency or instrumentality shall become the holder of the above mentioned note, it may, before or after maturity, move the collateral cotton from one storage point to another and pay freight; may compress the commodity; may store separately, in block, or otherwise; may insure or reinsure against any risks, or otherwise handle or deal with the commodity, as may be deemed appropriate and proper subject to the terms of this loan agreement, releasing, substituting, and obtaining any and all instruments and documents, and paying or discharging any accrued or accruing charges or expenses as may in any way be appropriate or necessary therefor. Any costs and expenses connected with such handling without regard to insur-

ance savings by reclassification or duration shall be a charge against the commodity, payable out of any proceeds thereof.

7. The undersigned further warrants for the benefit of any holder of the note, other than the payee, that he has no defenses to said note or set-offs or counterclaims against the payee; that none will be claimed which may hereafter arise against any prior party and that in case of any judicial proceedings on said note by any such holder he hereby waives the right to any and all defenses, counterclaims, or set-offs against any or all prior parties.

8. *Inasmuch as said note is eligible for discount or purchase by Commodity Credit Corporation, an agency of the United States, the undersigned agrees with and for the benefit of the United States to participate in any agricultural conservation program or any cotton production or marketing adjustment program offered to cotton producers with respect to the production or marketing of the 1938 cotton crop by the Secretary of Agriculture pursuant to the provisions of the solid Conservation and Domestic Allotment Act or legislation enacted pursuant to Senate Joint Resolution 207, Seventy-fifth Congress. Neither the payment of said note nor any action taken pursuant to this agreement shall discharge or terminate the obligations under this paragraph 8.*

9. The undersigned, all lienholders and their agents by executing waiver and consent in paragraph (2) and all warehousemen by executing certificate and waiver in paragraph one (1) agree that they and each of them have full knowledge of the provisions

of section 16 (a) of the Reconstruction Finance Corporation Act as amended,* and have made the representations and statements contained in this loan agreement, for the purpose of influencing the Reconstruction Finance Corporation, to acquire the above-mentioned note by purchase, discount, or rediscount, or as security for a loan to the payee or its assignees, or otherwise, or to extend or renew credit in reliance thereon.

10. Unless this note is made payable to the Commodity Credit Corporation the undersigned represents he received on the day the above-mentioned note is dated the full amount thereof, without deductions for interest, commissions, storage, insurance, or other charges, and hereby acknowledges that he has received a copy of this agreement and the above mentioned note.

Read, considered, and signed.

WITNESS:

....

....

(Address)

....

(SIGNATURE OF PRODUCER)

By..

(FOR CORPORATE OF AGENT'S SIGNATURE)

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*Section 16 (a) of the Reconstruction Finance Corporation Act provides: "Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining money, property, or anything of value, under this act, shall be punished by a fine of not more than $5000, or by imprisonment for not more than 2 years, or both."